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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/631,103

07/31/2003

Anthony J. Hynes

PREC-3612

7750

5409 7590 04/05/2007  
SCHMEISER, OLSEN & WATTS  
22 CENTURY HILL DRIVE  
SUITE 302  
LATHAM, NY 12110

EXAMINER

BRINSON, PATRICK F

ART UNIT

PAPER NUMBER

3754

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

04/05/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

ED

<b>Office Action Summary</b>	Application No. 10/631,103	Applicant(s) HYNES ET AL.	
	Examiner Patrick F. Brinson	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 March 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10, 13-26, 29 and 31-34 is/are pending in the application.
- 4a) Of the above claim(s) 24 and 27-30 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-10 and 13-22 is/are allowed.
- 6) ☒ Claim(s) 23, 25 and 26 is/are rejected.
- 7) ☒ Claim(s) 31-34 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn. Examiner mistakenly labeled the previous action as a final, when in fact it

#### *Claim Objections*

2. Claim 31 is objected to because of the following informalities: Claim 31 recites "providing a reservoir", however it is not clear from the claim if a reservoir is a structural part of the device or something to be added onto the device, as disclosed in the specification. It is suggested that "material" is added just prior to "reservoir" to be consistent with the specification and for clarification. Appropriate correction is required.

#### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23, 23 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 401,950 to **Hausmann**.

The patent to **Hausmann** discloses a metering device comprising a metering element (J) that is translationally slidable and rotatable, a length of a compressible material line (C), and upon sliding or rotation of the metering element causes a peristaltic effect upon a material located within the compressible material line further causing a precision dispensing of a unit of material from the device, as recited in claim 23. The device comprises a base (A) and the compressible material line is positioned between the base and the metering element (50). The flow rate is regulated by appropriately positioning the metering element with piston-rod (I), which is graduated so as to indicate the quality of liquids injected, thereby making it selectable.

**Hausmann** does not disclose that the metered amount is within  $\pm 2\%$  of the desired quantity, however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to dispense the material at  $\pm 2\%$  of the desired quantity, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. Wherein the piston rod is calibrated and graduated, it would be reasonable to believe that the device of **Hausmann** would not meter more or less than  $2\%$  of the desired amount.

***Response to Amendment***

4. Applicant argues that **Kulle et al.** is a flow regulator and does not provide a peristaltic effect to meter fluid from a flexible line to within  $\pm 2\%$  of a desired quantity. The patent to **Haussmann** discloses a hypodermic syringe that provides a peristaltic effect to material within a flexible member, wherein the metering device is a slidable and/or rotatable device. The piston rod that actuates the metering device is graduated, thus allowing a user to administer precise amounts of fluid. It would be obvious that with this being a hand held device with a graduated actuator that the metering element would meter within  $\pm 2\%$  of the desired amount.

***Allowable Subject Matter***

5. Claims 1-10, 13-22 and 29 are allowed.
6. Claims 32-34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
7. Claim 31 would be allowable if rewritten or amended to overcome the claim objection set forth in this Office action.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to **Barracrough** and **Brown et al.** are pertinent to Applicant's invention in disclosing peristaltic metering devices.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Patrick F. Brinson** whose telephone number is (571) 272-4897. The examiner can normally be reached on M-F 7:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Kevin P. Shaver** can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Patrick F. Brinson  
Primary Examiner  
Art Unit 3754

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P. F. Brinson  
April 1, 2007